

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**GORDON ROY PARKER**

**Plaintiff,**

**vs.**

**UNIVERSITY OF PENNSYLVANIA**

**Defendant.**

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**CIVIL ACTION NO. 02-cv-567**

**ORDER**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2003, upon consideration of Defendant University of Pennsylvania's response to plaintiff's Motion for Summary Judgment and any response thereto, it is hereby ORDERED and DECREED that Plaintiff's Motion for Summary Judgment is DENIED.

**BY THE COURT:**

\_\_\_\_\_  
Honorable Anita B. Brody, J.

**CIVIL ACTION NO. 02-cv-567**

<sup>3</sup> Memorandum in support of plaintiff's motion for partial summary judgment, p.1

acknowledges this himself, in different language, when he summarizes his claim of being the victim of an adverse employment action:

It should be clear to anyone at this point that “Penn” does not wish to employ Plaintiff, has not attempted to employ Plaintiff, and that no individual hiring manager within “Penn” has not[sic?]<sup>4</sup> hired Plaintiff...<sup>5</sup>

Plaintiff’s claim that the affirmative action plan has a disparate impact is not a claim there was such an impact on him. In order to prevail on his disparate impact claim, Parker must establish that Penn did not hire him because of its affirmative action plan, and that the plan violates Title VII. 42 U.S.C. § 2000e-2(k)(1)(A)(1); Wards Cove Packing Co., Inc. v. Atonio, 490 U.S. 642 (1989); EEOC v. Metal Serv. Co., 892 F.2d 341, 346 (3d Cir. 1990). In a disparate impact case the plaintiff must show that the defendant “uses a particular employment practice ...” 42 U.S.C. § 2000e-(k)(1)(A)(i). (emphasis added).

Here, there was no “use.” Plaintiff’s own admissions show that the affirmative action plan was not the reason for Penn not having hired him. Rather, Plaintiff was not considered for any position because he did not apply for any. (Penn’s Memorandum in Support of its Motion for Summary Judgment at Exhibit 2, ¶ 6 and Exhibit 5, ¶¶ 28, 30). Thus, Penn’s affirmative action plan played no role in Penn’s employment action (actually, inaction). Therefore, Penn did not “use a particular employment practice that cause[d] a disparate impact...” 42 U.S.C. § 2000e-(k)(1)(A)(i). Thus, the adverse impact claim relating to Penn’s affirmative action plan fails as a matter of law.

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<sup>4</sup> Either 1) this is a typo, or 2) plaintiff intended to acknowledge here that he understands that he was not “rejected” during the relevant time period.

<sup>5</sup> Id., p. 8, Par. 2.

Plaintiff's retaliation claim is likewise predictable, based on his prior actions in this case, and in other courtrooms. His stated bases for the retaliation claim are:

1. Penn sought and received an order from this court requiring him to submit to a psychiatric examination;<sup>6</sup>
2. Penn defended a subpoena in another case, which was ultimately dismissed because of his failure to prosecute;<sup>7</sup> and
3. There was unspecified retaliation by unnamed persons within the Medical Center and Center for Technology Transfer.<sup>8</sup>

In addition, he seems to offer – almost as an aside – that an employee in the Office of Affirmative Action stated the following in a message to the director:

Mr. Parker's demeanor has caused me concern. In my every conversation with him, his tone is very angry, he talks at length, and at times his statements do not make sense.<sup>9</sup>

It should now be apparent to this court that the message taker's observations were not irrational or misplaced. In any event, as set forth in Penn's motion, there is no link between the message – it was not a factor – and the fate of plaintiff's resume.

These retaliation claims fail. This Court has already ruled that the order for psychiatric evaluation was proper. Plaintiff alleges no nexus between the fate of his resume and the subsequent "Wintermute" litigation. There are no facts whatsoever supporting the unnamed, unspecified retaliation.

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<sup>6</sup> Id., p.4, Par. 8.a. and d.; and pp. 52-4.

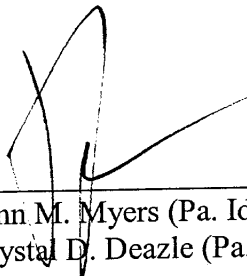
<sup>7</sup> Id., par. 8.b., and pp. 40-50.

<sup>8</sup> Id., 8.c.

**CONCLUSION**

For all of the foregoing reasons, Penn respectfully requests that the Court deny Parker's for Motion for Partial Summary Judgment and grant Penn's Motion for Summary Judgment.

Date: June 16, 2003



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John M. Myers (Pa. Id. No. 16642)  
Crystal D. Deazle (Pa. Id. No. 87901)

MONTGOMERY, McCracken,  
WALKER & RHOADS, LLP  
123 South Broad Street  
Philadelphia, PA 19109  
Telephone No.: (215) 772-1500  
Facsimile No.: (215) 772-7620

Attorneys for Defendant  
UNIVERSITY OF PENNSYLVANIA

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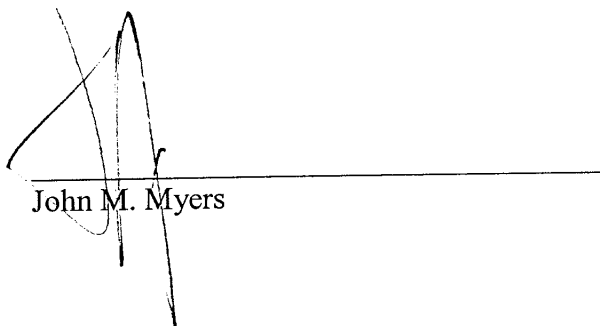
<sup>9</sup> Id., p. 51.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Response of Defendant University of Pennsylvania to Plaintiff's Motion for Summary Judgment was served by way of First Class Mail, postage prepaid, on this 16<sup>th</sup> day of June, 2003 upon:

Gordon Roy Parker  
4247 Locust Street, #806  
Philadelphia, PA 19104

*Pro Se Plaintiff*

A handwritten signature in black ink, appearing to be 'John M. Myers', is written over a horizontal line. The signature is stylized with a large, sweeping initial 'J' and 'M'.

John M. Myers